

STATE OF MICHIGAN
COURT OF APPEALS

APACHE CARPET & FLOOR COVERING,
L.L.C.,

UNPUBLISHED
April 23, 2013

Plaintiff/Counter-Defendant,

v

BANAH CORPORATION,

No. 305550
Wayne Circuit Court
LC No. 09-007559-Ck

Defendant/Counter-Plaintiff/Cross-
Plaintiff-Appellant/Cross-Appellee,

and

LIFE CHANGES DEVELOPMENT
CORPORATION,

Defendant/Cross-Defendant-
Appellee,

and

M. C. GUTHERIE LUMBER COMPANY,

Defendant/Cross-Defendant,

and

COMERICA BANK,

Defendant/Cross-Plaintiff/Third-
Party-Plaintiff-Appellee/Cross-
Appellant,

and

STEWART TITLE GUARANTY COMPANY,

Appellee,

and

DENNIS BROOKS and SARTORI
CORPORATION,

Third-Party-Defendants/Appellees,

and

ANTOINETTE DAY,

Third-Party-Defendant.

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent and would follow *Alan Custom Homes v Krol*, 256 Mich App 505; 667 NW2d 379 (2003), a published controlling opinion.

In *Alan Custom*, an unpaid contractor sought to foreclose on its lien and defendant property owner asserted that the lien could not be enforced because the contractor had failed to file a verified sworn statement prior to commencement of the foreclosure action. The situation in this case is the same; the contractor failed to file its verified sworn statement before seeking foreclosure. The *Alan Custom* Court held that plaintiff's failure to file the verified sworn statement prior to suit was not fatal because the contractor had substantially complied with the requirement. It found substantial compliance on two independent grounds. First, that the contractor had provided unsworn statements to the title company prior to the filing of suit. Second, the court held:

“[W]e find that although plaintiff filed the present cause of action, including its claim for foreclosure of the lien, before giving defendants a verified sworn statement, *plaintiff's provision of the sworn statement to them in February 2001, before the summary-disposition hearing was held . . . constituted substantial compliance with MCL 570.1110(8).*” *Id.* at 511. (emphasis added).

This holding was not reliant on the fact that the plaintiff had previously submitted unsworn statements.

Here, Banah delivered its verified sworn statement before the mortgagee's motion for summary disposition had even been filed. Given *Alan Custom*'s holding that it was adequate to provide the sworn statement after the summary disposition motion was filed, but before the hearing, the even earlier provision of the sworn statement in this case clearly amounts to substantial compliance.

/s/ Douglas B. Shapiro